now have had but a fragmentary expression. First is the point that our rules of evidence are neither logical nor wholly reasonable, but are, with their virtues and vices, true offsprings of the trial by jury. They are rules of convenience introduced *per doubt del lay gents*. Trial by jury, then, must first be understood; and in a complete and thorough manner the author traces it, step by step, illuminating his work with illustration. From the old trials, where the jurors knew the events they were trying, the growth of the conception of witnesses is traced, until rules became necessary for the giving of the testimony. Old rules are called on to explain what seem now to be anomalies; and among these anomalies is shown the so-called Best Evidence Rule. History, from this point of view, is now written for the first time, and written in a masterly and luminous style.

A second and equally important preliminary step is the discrimination between what is and what is not a rule of evidence. This leads to discussing Burden of Proof, Presumptions, carefully and conclusively, but from an unchanging standpoint — they do not involve rules of evidence. Especially full is the treatment of the various rules of law misnamed the parol evidence rule, and much time is devoted to their application to wills. It is impossible to go into the mooted question as to whether the Court, in construing a will, really looks to the testator's intention, as the author believes, or whether it holds intention wholly irrelevant. This question, at all events, is not one of the law of evidence, except so far as it deals, under Professor Thayer's views, with the rule excluding, in most cases, direct statements by the testator of his intention.

Having cleared the ground of this mass of spurious undergrowth, the author is ready to treat of the law of evidence proper, and the preliminary gives good promise for the further work. But in the last chapter he pauses to glance over the law of evidence as a whole, points out its failings, and suggests a remedy. This he finds in the discretion of the judge. A recognition of such increased judicial power may be hard to obtain in this country; but the wisdom of a change along this line is clear. Legislative reform of law is often a bungling affair, not likely to be carried out with the nicety which the present subject requires; and no one who has seen the workings of an English *nisi prius* court, in which the judge has wide discretion and debates on points of evidence are rare, can doubt that this power, wielded by competent hands, could accomplish beneficial results.

J. G. P.

LECTURES ON THE FOURTEENTH ARTICLE OF AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. Delivered before the Dwight Alumni Association by William D. Guthrie. Boston: Little, Brown & Co. 1898. pp. xxviii, 265.

This series of lectures is interesting, and the treatment of the subject scholarly. The history of the Fourteenth Amendment is told, and the scope and meaning of its terms are carefully discussed. Particularly satisfactory is the treatment of "due process of law." Full weight in that connection is properly allowed to the general usages of mankind, and great discretion is conceded to belong to legislatures, so long as their power is not arbitrarily used. It may well be regarded as an error to support the decision — *C. B. &c. R. R.* v. *Chicago*, 166 U. S. 226 — that

in the absence of a clause in a State constitution corresponding with the Fifth Amendment, a State may not take property for public use without compensation, that such a taking is not "due process of law." The truer historical view seems to be that the right to take and the moral duty to compensate are separate, and that failure to compensate does not invalidate the taking. But the position supported is consistent with the general attitude which the author assumes.

This attitude is the distinctive mark of the book. An ethical theory runs through the work, that the Fourteenth Amendment embodies a broad bill of rights; that the country is greatly menaced by improper legislation, and that its salvation is to be found in a broad construction of the Fourteenth Amendment. To this end the author gives to the word "liberty" its widest meaning, as equivalent to "freedom in the pursuit of happiness;" he wishes to include under the "privileges and immunities of citizens" all the rights mentioned in the first eight amendments; he regrets that the progressive income tax was not condemned as depriving citizens of the equal protection of the laws. This attitude is open to criticism, although the Supreme Court is showing a tendency to adopt it. Chief Justice Marshall's warning has a double-edged significance; we must remember it is a constitution with which we are dealing. While a constitution may well guarantee certain fundamental rights, such as that to personal freedom from restraint — which, indeed, is what "liberty" has always meant, unless this century has strangely broadened its significance — a constitution should not be expected to contain a solution of political problems, nor to act as a curb upon legislation *bonâ fide*, even though erratic. The danger of Mr. Guthrie's attitude is that it tends to shift the responsibility of government from the legislature to the courts, where it does not belong. J. G. P.

THE LAW OF MONOPOLIES AND INDUSTRIAL TRUSTS. By Charles Fisk Beach, Sr. St. Louis: Central Law Journal Co. 1898. pp. lxx, 760.

The greatness of the commercial interests involved and the novelty of many of the legal problems discussed make this treatise of peculiar importance. It is the principal topic alone, however, that gives the book character. The chapters dealing with the legal effect of contracts restraining trade and limiting the exercise of professions add little to common knowledge. pp. 107–224. Again, such chapters as those on trades unions, municipal contracts, and railway agreements are, at most, illustrative, and develop little new in principle. pp. 286–499. Nevertheless, the clearness of the exposition, and the fulness of the citations go far to justify these subsidiary portions of the work.

Interest centres in the discussion of the industrial "trust" — that vital problem of modern economics as of modern law. The "trust" has arisen, and has developed three defined forms within a decade. In the first class, the stock of the combining corporations is transferred to a board of trustees; in the second class, a central corporation acquires the stock of the absorbed companies; in the third class, a central corporation takes the property of the merged companies outright. The thesis of the author is that all are equally illegal by common law. But, the assumption that the whole doctrine against restraints of trade is elemental common law may well be questioned. p. 6. Nothing seems clearer in an examina-